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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALLSTATE INSURANCE COMPANY,

Plaintiff - Appellee,

v.

JACK BRESHEARS; et al.,

Defendants - Appellants,

and

MICHAEL JOSEPH LYNCH; et al.,

Defendants.

No. 04-15428

D.C. No. CV-03-01354-SC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Samuel Conti, District Judge, Presiding

Submitted November 18, 2005^{**}
San Francisco, California

Before: NOONAN, RYMER, and GOULD, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Jack and Dorothea Breshears appeal the district court's grant of summary judgment in favor of Allstate Insurance Company on the parties' requests for declaratory judgment. We affirm.

The underlying action against the Breshearses alleges injuries caused by a towed vehicle that had been negligently maintained. That action thus arises out of the maintenance and use of a pickup truck, and so is excluded from coverage by the motor vehicle exclusions. Whether the Breshearses sold the pickup prior to its being towed is immaterial because the policy exclusions do not specify ownership of the vehicle at the time of the accident. The dead storage exception to the motor vehicle exclusion is not applicable because the pickup was not in dead storage at the time of the accident, as it was being towed.

Allstate was not obligated to provide the Breshearses with independent counsel because Allstate's trial counsel in the personal injury case could not influence the outcome of the coverage case, which turned entirely on matters of law. Accordingly, there was no conflict of interest under California Civil Code § 2860(b).

AFFIRMED.